

****E-filed 6/18/10****

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ELAN MICROELECTRONICS
CORPORATION,

No. C 09-01531 RS

ORDER RE MOTION TO STRIKE

Plaintiff,

v.

APPLE, INC.,

Defendant.

Apple has filed a motion to strike paragraphs 26-34 of the declaration of Robert Dezmelyk, presently set to be heard on June 21, 2010, in conjunction with the technology tutorial herein. By letter brief, Apple has also requested that its motion be extended to reach paragraph 4 of Dezmelyk's "rebuttal" declaration. Apple contends that the matter it seeks to strike represents new opinions, not disclosed in the summary of Dezmelyk's testimony that was served by Elan pursuant to Patent Local Rule 4-3(e). Apple argues that it did not have the opportunity to depose Dezmelyk regarding these opinions. Elan contends that the material in issue merely represents additional *detail* and that Dezmelyk's basic opinions are unchanged from what was disclosed in the summary. Elan further argues that Apple in fact deposed Dezmelyk on the very topics that are reflected in the paragraphs it now seeks to strike.

1 Evaluating whether the challenged paragraphs represent “new” opinions or not appears
2 inextricably intertwined with the process of gaining an understanding of the technology and claim
3 construction. Additionally, at this juncture the Court cannot predict the extent to which expert
4 testimony will or will not be necessary in construing the claims. Accordingly, the motion to strike
5 will be taken under submission without oral argument. To the extent the Court concludes that the
6 challenged paragraphs represent new opinions not disclosed pursuant to Patent Local Rule 4-3(e), it
7 will not rely on those opinions in construing the claims.

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10 IT IS SO ORDERED.

11 Dated: 06/18/2010



12 RICHARD SEEBORG
13 UNITED STATES DISTRICT JUDGE
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